



South Carolina Department of Health
and Environmental Control

Regulation 61-107.17

SWM: Demonstration-of-Need

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**Bureau of Land & Waste Management
Division of Mining & Solid Waste Management
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Columbia, SC 29201**

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DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code Sections
44-96-260, 44-96-290, and 44-96-450

R.61-107.17. Solid Waste Management: Demonstration-of-Need

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A. Applicability.

1. This regulation establishes the criteria for the demonstration-of-need for the construction of new and the expansion of existing municipal solid waste landfills, municipal solid waste incinerators, industrial incinerators, Part IV (long-term) construction, demolition, and land-clearing debris landfills, and industrial landfills. Solid waste disposal facilities that have stopped accepting waste prior to the effective date of this regulation shall be considered new facilities and required to demonstrate need pursuant to this regulation.

2. This regulation does not apply to inert or cellulosic solid waste facilities or to industrial facilities managing solid waste generated in the course of normal operations on property under the same ownership or control as the solid waste management facility if the facility is not a commercial solid waste management facility.

3. This regulation does not apply to facilities that handle hazardous waste as defined by the Resource Conservation and Recovery Act (RCRA) and R.61-79, Hazardous Waste Management Regulations, and infectious waste as defined by R.61-105, Infectious Waste Management Regulations.

B. Definitions

1. "Commercial solid waste disposal facility" means a publicly or privately owned solid waste disposal facility which accepts solid waste from outside the county or region in which the facility is located.

2. "County or regional Solid Waste Management Plan" - means a solid waste management plan prepared, approved, and submitted by either a single county or a region, i.e., a group of counties, pursuant to the Solid Waste Policy and Management Act, S.C. Code Ann. Section 44-96-80 (1976 Code as amended.)

3. "Department" means the South Carolina Department of Health and Environmental Control.

4. "Disposal Rate" means the total volume or rate of disposal at the solid waste disposal facility on a fiscal year basis.

5. "Expand" or "Expansion" means any increase in the permitted capacity of a solid waste disposal facility, or any increase in the total volume or annual permitted rate of disposal at a solid waste disposal facility.

6. "Planning area" means the area around a solid waste disposal facility as defined below which is used for determining the need for new disposal facilities and expansions of existing disposal facilities.

a. The following planning areas shall be used by the Department for determining need for commercial facilities:

<u>Commercial Solid Waste Disposal Facility</u>	<u>Size of Planning Area Around Landfill/Incinerator</u>
Municipal Solid Waste Landfill	75-mile radius
Industrial Landfill	75-mile radius
Municipal Solid Waste Incinerator	75-mile radius
Industrial Incinerator	75-mile radius
Part IV Construction Demolition and Land-clearing debris Landfill	10-mile radius

b. The planning area for an existing county or region owned facility that only accepts waste generated within its boundaries shall be limited to the county or region in which the facility is located. The local solid waste management plan will identify a facility as being a county facility or a regional facility. Any new county or region owned facility that is proposing to accept only waste generated within its boundaries shall be subject to the planning area in Section B.6.a.

7. "Region" means a group of counties which is planning to or has prepared, approved, and submitted a regional solid waste management plan to the Department pursuant to S.C. Code Ann. Section 44-96-80.

8. "Solid Waste" means any garbage, refuse, or sludge from a waste treatment plant, water supply plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities. This term does not include solid or dissolved material in domestic sewage, recovered materials, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to NPDES permits under the Federal Water Pollution Control Act, as amended, or the Pollution Control Act of South Carolina, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1964, as amended. Also excluded from this definition are application of fertilizer and animal manure during normal agricultural operations or refuse as defined and regulated pursuant to the South Carolina Mining Act, including processed mineral waste, which will not have a significant adverse impact on the environment.

9. "Solid Waste Disposal Facilities" means municipal solid waste landfills, municipal solid waste incinerators, industrial incinerators, Part IV (long-term) construction, demolition, and land-clearing debris landfills, and/or industrial landfills.

10. "State Solid Waste Management Plan" means the plan which the Department of Health and Environmental Control is required to submit to the General Assembly and to the Governor pursuant to S.C. Code Ann. Section 44-96-60.

C. Demonstration-of-Need Requirements for Solid Waste Disposal Facilities.

1. No permit to construct a new solid waste disposal facility or to expand an existing solid waste disposal facility shall be issued until a demonstration-of-need is approved by the Department, provided, however, that

any increase in the disposal rate shall not require a demonstration-of-need as long as such disposal rate is less than the maximum disposal rate as determined in paragraph D.3.b. below.

2. Construction of new or expansion of existing solid waste disposal facilities may not be commenced until all permits required for construction have been issued.

3. Need shall be demonstrated for the following types of solid waste disposal facilities:

- a. Municipal Solid Waste Landfills;
- b. Part IV (long-term) Construction, Demolition, and Land-Clearing Debris Landfills;
- c. Industrial Landfills;
- d. Municipal Solid Waste Incinerators; and,
- e. Industrial Solid Waste Incinerators.

4. The initial demonstration-of-need for a new or expanded solid waste disposal facilities shall be made by the Department prior to a consistency determination.

5. In determining whether there is a need for new solid waste disposal facilities or expansion of existing solid waste disposal facilities, the Department shall not consider solid waste generated in jurisdictions not subject to the provisions of a county or regional solid waste management plan pursuant to S.C. Code Ann. 44-96-80.

D. Determining Need.

1. For all new proposed solid waste disposal facilities and all proposed expansions of existing solid waste disposal facilities, the applicant shall submit the following information to the Department:

- a. The longitude and latitude coordinates for the site of the proposed new facility or proposed expansion; and,
- b. The proposed disposal rate for the proposed new facility, or for the proposed expansion of the existing facility.

2. The Department will conduct a review of permitted disposal rates at existing solid waste disposal facilities within the planning area of any new proposed solid waste disposal facilities and any proposed expansions of existing solid waste disposal facilities, based upon information contained in the applicable county or regional solid waste management plan and the State Solid Waste Management Plan for the proposed new solid waste disposal facility/expansion.

3. In determining if there is a need for a new or expansion of an existing solid waste disposal facility, the Department will use the criteria outlined below:

- a. Where there are at least two (2) commercial disposal facilities under separate ownership within the planning area that meet the disposal needs for the area, e.g., that accept special waste and, if applicable, are capable of handling additional tonnage, no new disposal capacity will be allowed. Disposal facilities that accept only waste generated in the county or region in which the disposal facility is located will not be

considered in determining need.

b. Each disposal facility in the planning area will be allowed up to a maximum yearly disposal rate equal to the total amount of solid waste destined for disposal that is generated in the county or counties that fall, either all inclusive or a portion thereof, within the planning area. Disposal rates for existing facilities shall not be reduced pursuant to this provision.

c. In determining the amount of solid waste destined for disposal, the Department will use figures in the current Solid Waste Annual Report for the proposed waste stream, e.g., the generation rate for a Part IV construction, demolition debris and land-clearing debris landfill will be determined by adding the amounts of construction and demolition debris, and land-clearing debris destined for disposal in permitted construction, demolition, and land-clearing debris landfills in the counties that fall within the planning area.

d. The Department reserves the right to review additional factors in determining need on a case-by-case basis.

4. Variance.

a. In regards to demonstration-of-need, any solid waste disposal facility existing on the effective date of this regulation that exhausts its capacity, shall be allowed to either construct a new solid waste disposal facility at its permitted annual rate of disposal as a replacement, or expand the volume of the existing solid waste disposal facility. The planning area shall be determined based on the location of the expansion or replacement facility. This variance applies to all solid waste disposal facilities, including solid waste disposal facilities that accept only waste generated in the county or region in which the facility is located.

b. A solid waste disposal facility shall apply to the Department for a variance to either replace the solid waste disposal facility or to expand the volume of the existing solid waste disposal facility at least five (5) years before exhausting its permitted capacity or the operational life of the facility.

5. The Department will advise the applicant and the host county or region in writing of its demonstration-of-need determination.

E. Violations and Penalties. A violation of this regulation or any permit, order, or standard subjects the person to the issuance of a Department order or a civil enforcement action in accordance with S.C. Code Ann. Section 44-96-450. Willful violation of this regulation or any permit, order, or standard subjects the person to the issuance of a Department order or to criminal enforcement action in accordance with S.C. Code Ann. Section 44-96-450. Any person to whom an order is issued may appeal it as a contested case pursuant to any applicable provision of R.61-72, Procedures for Contested Cases, and the S.C. Administrative Procedures Act, S.C. Code Ann. Section 1-23-310 et seq.

F. Severability. Should any section, paragraph, sentence, word, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of this regulation shall not be affected thereby.